

REMARKS

Claims 1-4 were examined and reported in the Office Action. Claims 1-4 are rejected. Claims 1, 3 and 4 have been amended. Claims 1-4 remain.

Applicant requests reconsideration of the application in view of the following remarks.

It is asserted in the Office Action that Claims 1 and 3-4 are objected due to informalities. In response, Applicant has amended Claims 1 and 3-4. Approval is respectfully requested.

It is asserted in the Office Action that claims 1-4 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Krishnamurthy et al. ("Krishnamurthy") further in view of U. S. Publication 2003/0048750 issued to Kobayashi ("Kobayashi"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." Further, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he

mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007).

Additionally,

[a] statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

In response, Applicant has amended Claims 1 and 3-4 as shown in the above amendments and notes Kobayashi is relied on for separating multimedia data from http and spreadsheet data. That is, Kobayashi divides paths for multimedia data and http or spreadsheet data and selects a path based on number of hops, congestion and bandwidth information. Kobayashi, however, does not give a priority of multimedia data over http or spreadsheet data so that QoS for multimedia data rates are guaranteed while the QoS data rates for general application data are not guaranteed. Therefore, even if Kobayashi is combined with Krishnamurthy, the resulting invention would still not teach, disclose or suggest that “a QoS data rate for multimedia applications is guaranteed and a QoS data rate for general applications data is not guaranteed, where the QoS data rate for multimedia applications is prioritized over the QoS data rate for general applications.”

Further, the assertions made in the Office Action on pages 6 and 10 that lead to a conclusion of obviousness are not explicit and the basic requirements of an articulated rationale under MPEP 2143 cannot be found. Therefore, since neither Krishnamurthy, Kobayashi, and therefore, nor the combination of the two, teach, disclose or suggest all of the limitations of Applicant’s amended claims 1, 3 and 4, as listed since a *prima facie* case of obviousness has not been met under MPEP 2142. Additionally, the claim that directly depends from amended claim 1, namely claim 2, would also not be obvious over Krishnamurthy in view of Kobayashi for the same reason.

Accordingly, reconsideration and withdrawal of the rejection under 35 USC 103(a) for claims 1-4, as being unpatentable over Krishnamurthy et al., and further in view of Kobayashi is respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-4 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated:

1/30/08

By: _____

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class Mail , With Sufficient Postage, In An Envelope Addressed To: Mail Stop RCE, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Linda Metz

January 30, 2008